

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

CURTIS STEWART, Register No. 182472,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4168-CV-C-NKL
)	
CORRECTIONAL MEDICAL SERVICES,)	
et al.,)	
)	
Defendants.)	

ORDER

On March 15, 2007, the United States Magistrate Judge recommended granting the motion to dismiss of defendants Dormire, Woods, and Griffin. The Magistrate Judge further recommended that plaintiff's motion to show cause and for preliminary injunctive relief be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on March 27, 2007. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Further, although not set forth specifically in the recommendation of the Magistrate Judge, plaintiff's motion for judgment on the pleadings filed in conjunction with his response to defendants' motion to dismiss was addressed in the Report.

The standard for judgment on the pleadings is a strict one. The movant must clearly establish that there are no material issues of fact, and judgment is appropriate as a matter of law. Lion Oil Co., Inc. v. Tosco Corp., 90 F.3d 268, 270 (8th Cir. 1996); National Car Rental System, Inc. v. Computer Associates Int'l, Inc., 991 F.2d 426, 428 (8th Cir. 1993). The court accepts as true the facts pled by the nonmoving party and draws all reasonable inferences from the pleadings in that party's favor.

At this point in the proceedings, drawing all reasonable inferences in favor of defendants, there is clearly a dispute of material fact in this case; and judgment on the pleadings is not warranted. Plaintiff's claims are more appropriately addressed at the summary judgment stage, where the parties can submit evidence after having the opportunity to conduct discovery. The current scheduling order provides for discovery to close on May 5, 2007, and summary judgment motions due by June 6, 2007.

IT IS, THEREFORE, ORDERED that plaintiff's motion for judgment on the pleadings is denied. [12] It is further

ORDERED that the Magistrate Judge's March 15, 2007 Report and Recommendation is adopted. [41] It is further

ORDERED that the motion of defendants Dormire, Woods and Griffin to dismiss is granted and plaintiff's claims against these defendants are dismissed, without prejudice, pursuant to 42 U.S.C. § 1997e, for failure to exhaust administrative remedies. [9] It is further

ORDERED that plaintiff's motion to show cause and for preliminary injunctive relief is denied. [19]

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: April 11, 2007
Jefferson City, Missouri